

**ZONING BOARD OF APPEALS  
MINUTES OF MEETING  
MARCH 10, 2011**

Town of Bedford  
Bedford Town Hall  
Lower Level Conference Room

**PRESENT:** Jeffrey Cohen, Chair; Jeffrey Dearing, Vice Chair; Brian Gildea, Clerk; Angelo Colasante; Kenneth Gordon; Carol Amick; Stephen Henning

**ABSENT:** None

Mr. Cohen introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and ZBA assistant introduced themselves.

**PRESENTATION:** Mr. Gildea read the notice of the hearing.

**PETITION #022-11** – Latady Design, LLC, for Raul Radovitzky and Flavia Cardarelli, 16 Anthony Road, seeks a Special Permit per Section 7.1.2 and Section 7.1.4 of the Zoning By-Law to construct addition within front and side yard setbacks.

Mr. Cohen designated the voting members for this petition as himself, Mr. Dearing, Mr. Gildea, Mr. Colasante, and Mr. Gordon.

Kevin Latady, the architect and designer for the applicant, introduced himself and said the owners have lived in this small house on the corner of Hunt Road and Anthony Road for many years and would like to expand. He showed photographs of the house and the proposed addition and referenced the plot plan and building plans included in the application packet. He noted that the existing house extends into the setback by about two feet, and this addition will be flush with the existing structure, not extending any farther into that setback.

Mr. Latady explained that the existing kitchen in the house is 8'x8', so the new addition will include an expanded kitchen, along with an expanded entranceway, a garage, a family room above the garage and a master bedroom above the extended kitchen. He said that he and the owners have taken great care to ensure that this addition fits in with the scale of the neighborhood, so they have made sure to keep it as small as possible so it will not seem out of place.

Mr. Gordon asked about the driveway. Mr. Latady showed it on the plan and said they will still be using the existing driveway, which has a curb cut on Hunt Road, but will be repaving it and altering its course slightly to match the new garage.

Mr. Gildea asked the applicant whether he had any aerial GIS photographs or any documentation showing the surrounding houses and the density of the neighborhood.

Mr. Latady apologized and said he had not printed any. He said there is, however, precedent for this kind of addition in the neighborhood, as a number of houses in that area have had additions in the past several years, so it is fairly common there.

There was further discussion about the plot plan and setback lines.

Mr. Henning asked whether the steps count as part of the setbacks. Mr. Cohen replied that the Bedford Zoning By-Law does not count steps as part of the setback unless they are covered. He said that since these steps will not have a roof over them, they are not counted as part of the setback.

Mr. Cohen opened the hearing to the public.

Diane Grattan, of 10 Anthony Road, said that she has some concerns about this project, especially the size of the addition, as a total of 4,500 square feet sounds very high. Mr. Latady explained that the 4,500 square feet is actually the gross count including the garage, basement, and storage. He said that those areas are not usually considered for square footage but he included them anyway to show the total space. He noted that the actual living space will be 2,143 square feet.

Ms. Grattan said that she has lived at 10 Anthony Road for six years and she only recalls seeing one house expansion being built in time, so she doesn't think it is accurate to say that it is "common" in the area. She said that she is a writer and works from home so she is concerned about the noise and activity during construction. She asked how long the addition will take to build, if it is approved. Mr. Latady said it would start in April and take approximately through the summer.

Ms. Grattan asked what time construction is allowed to begin on weekdays. Mr. Cohen said he believes it is 7 AM on weekdays and 8 AM on Saturdays, with no work allowed on Sundays. He said any concerns about noise and the time of work should be directed to the Code Enforcement Office, adding that this Board's primary concern is not with construction activity but with dimensions and zoning.

Mr. Cohen read into the record a letter from Edward Shamon, dated March 10, 2011 (see attached). He said that Mr. Shamon makes some good points, especially about marking the corners of the property for the survey. Mr. Latady said he would be amenable to having the property corners marked or staked to be sure the setbacks are adhered to.

With no further comments or questions from those in attendance, Mr. Cohen closed the public hearing.

#### **DELIBERATIONS:**

Mr. Cohen said this application clearly requires a Special Permit, as the lot and structure are pre-existing non-conforming. He noted that the two conditions of a Special Permit are that the project is not injurious or detrimental to the neighborhood and is in keeping

with the intent and purpose of the By-Law. He said he feels this project meets those requirements. Mr. Dearing agreed, pointing out that houses encroaching a few feet into the setbacks are very common along Hunt Road and Anthony Road, so he doesn't feel this would be out of character with the neighborhood at all. Mr. Gildea agreed as well and stated that the applicants have clearly made an effort to not encroach any farther into the existing non-conforming setback than the house already does. Mr. Gordon said he doesn't see any concerns from the direct abutters on either side of the house, which is also a good sign.

Mr. Colasante said he wishes he could have seen an aerial GIS photograph of the area to ensure that this project really will not affect the density of the neighborhood. He said he thinks it is always important to consider the density of the area when reviewing a Special Permit such as this.

**MOTION:**

Mr. Gildea moved to grant a Special Permit to Latady Design, LLC, for Raul Radovitzky and Flavia Cardarelli, 16 Anthony Road, a Special Permit per Section 7.1.2 and Section 7.1.4 of the Zoning By-Law to construct addition within front and side yard setbacks, as substantially shown on Exhibits A through I.

Mr. Dearing seconded the motion.

Mr. Cohen said that after hearing concerns from Ms. Gratton and seeing the letter from Mr. Shamon, he would like to see a condition added to the motion that markers be placed at the corners of the property prior to construction so that there will be no derogation from the plot plan.

**AMENDED MOTION:**

Mr. Gildea moved to grant a Special Permit to Latady Design, LLC, for Raul Radovitzky and Flavia Cardarelli, 16 Anthony Road, a Special Permit per Section 7.1.2 and Section 7.1.4 of the Zoning By-Law to construct addition within front and side yard setbacks, as substantially shown on Exhibits A through I and subject to the condition that markers will be placed at the corner of the property prior to construction.

Mr. Dearing seconded the amended motion.

Voting in favor of the amended motion: Cohen, Dearing, Gildea, Colasante, and Gordon  
Voting against: None  
Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Cohen explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period. The applicant is then responsible for getting the decision

recorded at the Registry of Deeds. Once the decision is recorded, the applicant may apply for a Building Permit at the Code Enforcement Department.

**PRESENTATION:** Mr. Gildea read the notice of the hearing.

**PETITION #021-11** – BSC Group, for Mark and Carrie Maron, 144 North Road, seeks a Variance per Section 6.2.1 of the Zoning By-Law for lot area; per Section 6.2.5 for lot width; and per Section 6.2.3 for lot frontage, as an alternative to an approved subdivision.

Mr. Colasante explained that his company has worked with BSC Group often in the past and likely will again in the future, so he must recuse himself from this hearing. Mr. Cohen therefore designated the voting members as himself, Mr. Dearing, Mr. Gildea, Mr. Gordon, and Ms. Amick.

Steven Martorano and Katie Moniz, of BSC Group, greeted the Board. Ms. Moniz handed out a more updated site plan than the one included in the application packet and noted that the plan has been tweaked to incorporate some of the comments made by other Town departments. She explained that the owners of 144 North Road, Mark and Carrie Maron, would like to subdivide their existing lot into two residential lots. She said the Marons would continue to reside at the current house and the new house would be accessed by a new driveway off North Road. She stated that they are seeking three Variances from the Board for this project: from Section 6.2.1 of the Zoning By-Law for lot area, from Section 6.2.5 for lot width, and from Section 6.2.3 for lot frontage.

Ms. Moniz referenced two plot plans in the application packet and pointed out that these plans show the two options the Marons have for subdividing the lot. She said that the first option is one the Marons are allowed to do as of right, without any Town approvals, but that option requires a much more extensive driveway and more impervious surface on the land. She said that the second option is the one they are requesting Variances here for tonight, which will drastically reduce the impervious surface on the lot and not require the large cul-de-sac shown in Option A. She noted that this will be much less intrusive on the area and will also minimize impacts to the nearby wetlands and buffer zones.

Ms. Moniz said she met last week with Adrienne St. John, the Town Engineer with the Department of Public Works (DPW), and Ms. St. John made some recommendations for the site plan. Ms. Moniz said that the newest version of the site plan that was given to the Board members tonight has incorporated those comments. She said they have also incorporated the Fire Department's requests into this new site plan, including creating a T-shaped driveway so that a small fire truck can make a three-point turn and not have to back out onto North Road.

Mr. Martorano said that he wanted to mention two other items before the Board members began their questions. The first item is that while the site plan shows a house, that is not necessarily the exact location where the house would be located; the dotted line on the plan shows the potential area where a house could be put. The second item is that

because the house is set back from the road, the Fire Department has required that the house either has a hydrant or sprinklers, and they are amenable to either of those options.

Mr. Gildea said that all Variance cases must prove a hardship on the land; he asked the applicants what they consider the hardship to be here. Mr. Martorano said that the hardship comes from the dimensions of the lot and the extensive amount of wetlands on the property.

Mr. Cohen opened the hearing to the public.

Nancy Gore, of 8 Harvard Drive, said she has been living at her house in Bedford for 38 years. She said she is a bit unclear as to what the term "subdivision" actually means in this instance. She asked whether this proposal is just for one house, and asked how she can know that there will be no more houses built here in the future. Mr. Martorano replied that this will be for just one house, as it is completely impossible for them to ever build another house at this property. He said that in the very beginning there was discussion of building two houses here, but everyone involved quickly realized that it was simply not possible because of the extensive wetlands.

Ms. Gore talked with the Board members and the applicants about the location of this proposed house in relation to her own house on Harvard Drive and to North Road. She said her biggest concern is that a new house will affect the water table in the area. She explained that Harvard Drive has had many issues with stormwater and runoff and flooding in the past, and she is very worried that this will only add to it. The Board talked with the applicants about the shape and topography of the lot and examined the contours of the site plan.

Ms. Gore asked for confirmation about what the applicant said earlier when he said they could create this subdivision as of right without any Town approvals. Mr. Martorano said that is indeed true, in that this is called an Approval Not Required (ANR) subdivision, in which one large lot is split into two to create two new lots with two houses. He said that the plan they may do as of right involves a much bigger driveway and much less greenspace on the land, so this Variance tonight will allow them to subdivide the lot with a much smaller driveway and less intrusion into the wetland.

Mr. Martorano explained that a traditional subdivision would require things such as granite curbing, catch basins, and more piping, and the stormwater requirements would force them to treat the drive area as a full-width road. He said that the difference with this plan is that there would not need to be such an extensive drive area and also would mean that the runoff would be easier to control, thereby minimizing not only impervious surface but also drainage. He added that the impact for both options would be minimal, but the option proposed here tonight would be even more minimal.

Arlene Gelormini, of 10 Harvard Drive, said she and her husband Ray have been fortunate to not have any flooding problems because their house is built well above grade, but all the other people she knows on Harvard Drive have had major flooding

problems over the years, and she is just as worried as Ms. Gore that this new house will make the situation even worse. She asked for further confirmation that this could only ever be one house on this lot, and it won't be something similar to the Habitat for Humanity development. Mr. Martorano stressed that it could only ever be a one house project due to the extensive wetlands on the property, so they would never have to worry about it being more than that.

Mr. Cohen said the Fire Department's memo states that this driveway would have to stay cleared during the winter in case of any fire or emergency at the house. Mr. Martorano said they understand that and it would have to be made clear to the future owner that the driveway must always be plowed and clear.

Mr. Cohen said that the Board has received several memos from other Town departments which he would like to read into the record at this time. Mr. Cohen read a memorandum from Adrienne St. John, DPW engineer, dated March 8, 2011 (see attachment). Mr. Martorano talked with the Board about the comments in Ms. St. John's memo.

Mr. Cohen read a memorandum from Richard Joly, Planning Director, dated February 18, 2011 (see attachment).

Mr. Cohen read a memorandum from David Grunes, Fire Chief, dated March 10, 2011 (see attachment).

Ms. Amick asked the applicants whether it is the intent of the owners to move forward with the original plan if this does not get approved. Mr. Martorano said it is their intent to move forward with that original option if they don't get this Variance.

Ms. Amick asked whether there was any discussion about the cost of the project at the Planning Board meeting. Mr. Martorano said he doesn't believe the subject of cost came up; he said the Planning Board was more focused on lessening the impact of impervious surface on the lot.

The Board members examined the site plan and locus plan with the abutters. Ms. Gelormini said she worries that houses getting tucked into areas such as this compromise the beauty and integrity of Bedford.

Mr. Gordon said it sounds like the applicants have three options: to create the as-of-right lot with the larger driveway; to create this proposed lot with the smaller drive; or to do nothing at all. He said that in the end it seems to him that the applicants really only want to do the lot this way because it is less expensive, which to him isn't grounds for a Variance.

There was more discussion about the wetlands and buffer zones, as well as roof runoff.

With no further comments or questions from those in attendance, Mr. Cohen closed the public hearing.

**DELIBERATIONS:**

Mr. Cohen said that this project clearly needs a Variance. To ensure that the seven conditions for a Variance have been met, he went through the pieces of the “Variance puzzle”:

*A particular use must be sought.* Mr. Cohen said that is clearly the case here.

*The use must be for one not requiring a Special Permit.* Mr. Cohen said that is also obvious in this case.

*The project must affect a particular parcel or existing building.* Mr. Cohen said that is certainly true here, as the Variance is being requested specifically for 144 North Road.

*There are conditions affecting the parcel or building but not the whole district.* Mr. Cohen said he could speak in favor of that condition. Mr. Gordon said he feels that condition is debatable, as the wetlands affect more than just this parcel.

*The project is without detriment to the public good.* Mr. Cohen stated that he feels this condition is met here. There was discussion among the Board members about whether putting another house in this location is without detriment to the public good.

*There will be no derogation from intent and purpose of the By-Law.* Mr. Cohen said that this proposed plan is far more preferable than the plan the applicants could do as of right, so he feels there is less derogation with this proposal than what could potentially happen. Mr. Dearing said he feels that the language in the Zoning By-Law under Section 6.2.5 has the specific intent of avoiding this kind of “pork chop” lot, so the creation of this kind of lot does seem to go against the intent and purpose of the By-Law.

*A substantial hardship must be displayed.* Mr. Cohen said that the hardship here is due to the wetlands on the property. There was extensive discussion about whether the wetlands constitute a hardship.

The Board members talked about the fact that the applicants have the ability to do something worse than the proposed plan if this Variance is denied. For clarification purposes, Mr. Cohen asked the applicants whether they would definitely go ahead with the as-of-right plan if this application is denied. Mr. Martorano said they would absolutely go ahead with the as-of-right plan, and would probably be at the Planning Board office as early as tomorrow morning to move forward with it.

Mr. Dearing pointed out that the Board is being asked to grant a Variance for something it would not normally want to grant a Variance for, just because the applicants have the right to do something that could be worse. He said he doesn’t feel that is justification for

granting this Variance. He added that the cost of the as-of-right plan would be much higher and might not be worthwhile for a developer to build. Mr. Gordon agreed, noting that he finds it very difficult to believe that a developer would find the as-of-right plan financially reasonable, so the notion that the Board is choosing between the lesser of two evils may not be at all accurate.

Mr. Gildea said granting this Variance would also set a bad precedent in Town, as though the Board would be tacitly saying that anyone who has enough land should be able to subdivide their property and put another house on it. He said that to his recollection the ZBA has only granted one Variance during his entire tenure, so clearly the Board does not grant them arbitrarily, and he doesn't feel that this application meets enough of the conditions to make this Variance viable. Mr. Gordon noted that the only real hardship he sees here is financial, as the cost of the proposed plan is so much less expensive than the as-of-right plan.

The Board talked more about precedent and whether this kind of project had been done in Bedford before.

Mr. Dearing noted that the By-Law encourages the "most appropriate use of land throughout the Town," and he does not see that this Variance is an appropriate use of land. Mr. Henning said he does not necessarily think of this use as inappropriate, as this kind of subdivision has been done in Bedford before. Mr. Dearing said he feels it is inappropriate because, in his opinion, it goes against the spirit of the By-Law.

There was further conversation regarding the pros and cons of granting this Variance.

The Board members talked about what conditions they wanted to include in the motion. Mr. Cohen said he would like to see all five of the Fire Department's recommendations included.

**MOTION:**

Mr. Gildea moved to grant BSC Group, for Mark and Carrie Maron, 144 North Road, a Variance per Section 6.2.1 of the Zoning By-Law for lot area; per Section 6.2.5 for lot width; and per Section 6.2.3 for lot frontage, as an alternative to an approved subdivision, as shown in Exhibit A and further complying with the following conditions: not more than one dwelling will be placed on lot 1B; the deed will include a restriction for future homeowners to keep the turnaround area of the driveway clear of snow and other debris, and that the turnaround area be constructed of plowable materials such as pavers or grass blocks; and that the applicant complies with all five conditions set forth in the memo from Fire Chief Grunes, dated March 10, 2011, marked as Exhibit B.

Mr. Dearing seconded the motion.

Voting in favor: Cohen

Voting against: Dearing, Gildea, Gordon, and Amick



Abstained: None  
Recused: Colasante

The motion did not carry, 1-4-0.

Mr. Cohen explained that the Board has 14 days to write a decision, after which time there is a 20-day appeal period, during which the applicants have the right to appeal the Board's decision to Land Court.

**BUSINESS MEETING:**

Mr. Cohen said that the process of approving minutes at meetings has been brought to his attention as something the Board might want to consider doing; he said that the Board has not made a policy of approving minutes in the past, mainly because the minutes get directly inserted into the ZBA decisions. He explained that, by law, the Zoning Board has 14 days to write and record its decision, so the timing has always been a problem, in that it is impossible for the Board members to approve minutes at the following meeting because by that time the decision is past due. There was discussion about how to approve the minutes in time to get the decision clocked in. Ms. Amick suggested the ZBA assistant send out the minutes via email and all the members have a set amount of time, such as 24 or 48 hours, to make any comments before the minutes are inserted into the decision; then, at the following meeting, the minutes are formally approved. The other members all agreed that it is worth trying this system to see how well it works.

Mr. Colasante said he likes the idea but thinks the Board members would need 48 hours, not 24, in order to make any comments. Mr. Cohen said he would like to try this in the future, starting with tonight's meeting minutes.

**MOTION:**

Mr. Gildea moved to adjourn the meeting.

Ms. Amick seconded the motion.

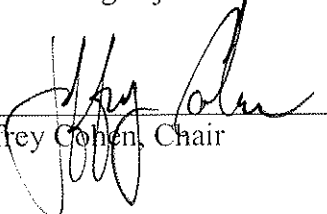
Voting in favor: Cohen, Dearing, Gildea, Colasante, and Gordon

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

The meeting adjourned at 9:40 PM.

  
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Jeffrey Cohen, Chair                      4/14/11                      Date

Respectfully Submitted,

Scott Gould  
ZBA Assistant

Attachments:

- Letter from Edward Shamon, signed and dated March 10, 2011
- Memorandum from Adrienne St. John, DPW engineer, dated March 8, 2011
- Memorandum from Richard Joly, Planning Director, dated February 18, 2011
- Memorandum from David Grunes, Fire Chief, dated March 10, 2011